

1. LAXMAN GOPAL KANHERE)
residing at "Saoli", 531-B)
Camp, Satara) ..(Orig. Accused)

2. STATE OF MAHARASHTRA) .. RESPONDENTS

Mr. Shrishailya S. Deshmukh for petitioner

Mr. Anilkumar Patil with Sachin Pawar, Nitin Meshram and Himanshu Mahajan for respondent

Mrs. V. R. Bhosale, APP

CORAM: SMT. RANJANA DESAI, J.

DATE: OCTOBER 24, 2007.

ORAL JUDGMENT:

. Respondent 1 (original accused 1) was tried along with three others (original accused 2 to 4 respectively) in the court of Additional Sessions Judge, Satara, in Criminal Appeal No. 49 of 1993 for offences punishable under Sections 453, 448, 415 and 420 of the Indian Penal Code ("I.P.C." for short). By the impugned judgment and order, the learned Judge acquitted accused 2 to 4 of the offence punishable under Section 455 read with Sections 453 and 442 read with Section 448 of the I.P.C. He acquitted accused 1 of the offence punishable under Section 415 read with Section 420 of the I.P.C. He convicted accused 1 for the offence punishable under Section 405 read with 453 of the I.P.C. and sentenced him to suffer simple imprisonment for three months and to pay a fine of

Rs.1,000/- . In default of payment of fine accused 1 has to suffer simple imprisonment for a period of one month. Being aggrieved by the said judgment and order original accused 1 preferred an appeal being Criminal Appeal No. 49 of 1993 in the court of Additional Sessions Judge, Satara. By his Judgment and Order dated 26/12/95, the learned Sessions Judge acquitted him, Being aggrieved by the said judgment and order of acquittal the State of Maharashtra has filed Criminal Appeal No. 220 of 1996.

2. Being aggrieved by the same judgment and order the original complainant has preferred Criminal Revision Application No. 71 of 1996 praying that the said judgment and order be set aside and the judgment and order dated 12/5/93 passed by the Chief Judicial Magistrate, Satara in R.C.S. No. 263 of 1990 convicting and sentencing respondent 1/original accused 1 be restored. For the sake of convenience I shall refer to the accused as per their description in the trial court.

3. It would be advantageous to begin with the facts of the case. The house property bearing City Survey No. 90 situated in Shaniwar Peth, Satara

Town was the ancestral property of the complainant PW 1 Nalini and accused 1. Smt. Radhabai Kanhere, the mother of PW 1 and accused 1 reside separately from accused 1 at Satara. According to PW 1 Gopal Kanhere father of accused 1 and PW 1 died in the year 1963 leaving behind the disputed house and other house property at Satara and some landed property at village Khindwadi. In the year 1974 there was partition of the said property between PW1, accused 1 and their mother Radhabai. It is the case of PW 1 that the disputed house was allotted to her. According to her, her mother started looking after its management on her behalf.

4. According to PW 1 in the month of September, 1989 accused 1 had inducted accused 3 and 4 as his tenants in the disputed house. When Smt. Radhabai called upon accused 3 and 4 to vacate those rooms they refused to do so on the ground that they have been inducted by accused 1.

5. PW 1 received information about the incident from her mother. She called upon accused 3 and 4 to vacate the said premises. According to PW 1, accused 2 is the son of accused 1, who assisted him in committing the offence. Since Accused 3 and 4

refused to vacate the said premises on 28/4/90, PW 1 went to Satara City Police Station and lodged a report against the accused on the basis of which offence vide C.R. No. 180/90 was registered. The accused were arrested and later on released on bail. After completion of the investigation the accused came to be charged as aforesaid.

6. The accused pleaded not guilty to the charge. They claimed to be tried. Since all the other accused have been acquitted it is not necessary to refer to the defence of the other accused. Defence of accused 1 was that he is the owner and in possession of the disputed house. According to him PW 1 was never put in possession of the disputed house. He has paid Municipal taxes of the disputed house and, therefore, he was justified in inducting accused 3 and 4 as his tenants in the disputed house.

7. In support of its case, the prosecution examined the complainant PW 1 Nalini, her mother PW 2 Radhabai and PW 3 Vasant Pawar, the investigating officer. The accused did not lead any evidence. After perusing the evidence on record, the learned Magistrate acquitted accused 2 to 4 and convicted

accused 1 as aforesaid. As stated above, accused 1 carried an appeal to the court of Additional Sessions Judge, Satara and by the impugned order the learned Sessions Judge acquitted him and hence this appeal by the State.

8. I have heard at some length Mrs. Bhosale, learned APP in support of the appeal and Mr. Patil learned counsel appearing for accused 1. I have also heard Mr. Deshmukh, learned counsel appearing for the petitioner/original complainant in Criminal Revision Application No. 71 of 1996.

9. Mrs. Bhosale, learned APP submitted that the learned Sessions Judge erred in setting aside the well reasoned judgment of the trial court. According to Mrs. Bhosale the evidence of PW 1 Nalini and PW 2 Radhabai is cogent and consistent. It establishes the prosecution case to the hilt. Learned APP urged that in the circumstances the impugned order be set aside and the accused be convicted in accordance with law.

10. Learned counsel appearing for accused 1 submitted that several civil proceedings are pending between accused 1 and PW 1. The dispute is

entirely of a civil nature. Accused 1 had inducted accused 3 and 4 as tenants under the bonafide belief that he is the owner of the disputed premises. There was no intention to commit criminal trespass and, therefore, accused 1 could not have been convicted. He submitted that the learned Sessions Judge was, therefore, perfectly right in acquitting accused 1.

11. Learned counsel appearing for the petitioner / PW 1 in Criminal Revision Application No. 71/96 submitted that the impugned judgment and order is perverse and must be set aside. He pointed out that in the year 1975 PW 1 had made an application for mutating her name in the revenue record . In the year 1989 her application was granted and entry was made in her favour. Accused 1 challenged the said entry by preferring an appeal being Appeal No. 61/91 before the Consolidation Officer. On 8/2/93 the said appeal was dismissed. He then filed appeal being Appeal No. 473 of 1993 before the Deputy Director of Land Records, Pune. It was dismissed on 18/3/03.

12. Learned counsel also pointed out that in 1989 PW 1 has filed Civil Suit No. 289 of 1989 in

Satara in the Court of Civil Judge, Junior Division, Satara for permanent injunction which was later on numbered as Civil Suit No. 214 of 2001. He pointed out that on 20/11/03 the said suit is decreed. He also pointed out that appeal carried from the said order by accused 1 is admitted and is pending in the District Court at Satara.

13. Learned counsel submitted that, therefore, there can be no dispute about the fact that PW 1 is the owner of the disputed house. He submitted that even in the partition deed dated 24/1/74 it is stated that PW 1 is in possession of the said house. PW 1 has clearly stated that PW 2 was requested by her to lookafter her property. Against the background of these facts it is evident that it is accused 1 who broke open the lock and inducted the tenants in the said house. Offence of criminal trespass is, therefore, clearly made out. Learned counsel submitted that, therefore, impugned judgment and order be set aside and the order passed by the learned Magistrate be restored.

14. Relationship of the parties is not disputed. The fact that father of PW 1 and accused 1 died in the year 1963 leaving behind the property with

which we are concerned in this case is also not disputed. The case of PW 1 is that in the year 1974 there was a partition of the said property between PW 1, accused 1 and PW 2 Radhabai and the disputed house was allotted to the share of PW 1. Her case is that PW 2 was looking after the management of the disputed house. According to accused 1, however partition deed was never acted upon. It appears that the partition deed is registered, however, the original partition deed is not on record. It is pointed out that in the partition deed it is stated that possession of the property is handed over to PW 1. However, as rightly observed by the learned Magistrate, PW 1 has not categorically stated that she is in possession of the disputed house.

15. It is also pertinent to note that in her evidence PW 1 has not stated that after the partition deed she had put her lock on the said premises and that it is accused 1 who broke open the said lock in her presence. Even in the First Information Report she has not stated so. Even PW 2 Radhabai has not stated that it is accused 1 who broke open the lock. Therefore, whether PW 1 was in actual possession or not cannot be stated to be

conclusively proved and it is for the civil court to finally adjudicate upon this issue. The averment made in the partition deed that PW 1 was put in possession of the disputed house may not by itself be sufficient. This again falls entirely within the purview of the civil court's jurisdiction.

16. My attention is drawn by the learned counsel for accused 1 to the fact that the interpleader suit filed by accused 3 was decreed by the trial court. In that suit accused 3 had requested the civil court to declare the rightful owner of the suit premises. Accused 1 carried an appeal to the District Court at Satara and that appeal was allowed. The judgment and order of the trial court was set aside on the ground that the suit was not maintainable. A second appeal was filed by PW 1 in this Court. This court dismissed the appeal. The trial court while sentencing accused 1 has heavily relied upon this suit. It is observed that this suit was decreed in favour of PW 1. It is observed that the civil court has clearly given a finding that PW 1 is the landlord and is in possession of the disputed house since the time of the partition dated 24/1/74. The trial court has further

observed that the plea of ownership by virtue of adverse possession raised by accused 1 was also turned down by the civil court. This judgment has, therefore, weighed with the trial court while convicting accused 1. However, subsequently the appellate court has set aside the said judgment and order. This court has also dismissed the appeal carried from the judgment and order of the appellate court. Therefore, one of the reasons why the trial court has convicted accused 1 has given way. It can no longer be said now that a civil court has as of today given a final finding that PW 1 is the owner and is in possession of the disputed house. This issue has yet to be finally decided by the civil court.

17. I am informed by learned counsel appearing for PW 1 that as regards the proceedings adopted by PW 1 for mutation of her name in the revenue record, she has succeeded before all the courts. However, mutation entries being only for fiscal purpose, the issue as to ownership and title cannot be said to have been conclusively decided in those proceedings. There again the parties will have to await final adjudication of their right, title and interest to the disputed house by the civil court.

18. So far as Civil Suit No. 214 of 2001 filed by PW 1 in the court of Civil Judge, Junior Division, Satara is concerned, appeal carried from the trial court judgment is pending in the District Court, Satara. Therefore, in those proceedings also the rights of the parties are not finally decided.

19. There can be no dispute about the fact that for some period receipts of Municipal Taxes have been issued in the name of accused 1. Notices were issued by the Municipal Authority in the name of accused 1 before starting proceedings for attachment of the disputed house for realisation of the arrears of taxes. Therefore, whether the partition deed was in fact acted upon or not is the issue which will have to be decided by the civil court.

20. In such circumstances, in my opinion, even if it is assumed that accused 1 inducted some tenants in the disputed premises mensrea, in the facts of the case, cannot be attributed to him. Ultimately, if the civil courts finally holds that it is PW 1 who was in possession of the disputed premises and the partition deed was acted upon and she is the

rightful owner of the said premises, the civil court will ensure that the grievance of PW 1 is redressed. So far as criminal proceedings are concerned, accused 1 cannot be convicted for the offence of criminal trespass. I also find substance in the submission of learned counsel appearing for accused 1 that there is delay in lodging the F.I.R. According to PW 1 tenants were inducted in September, 1989 but the F.I.R. is lodged on 28/4/90, There is, therefore, eight months' delay in lodging the F.I.R. If the premises were mutated in the name of PW 1 on 29/4/89, as contended by her, if in September, 89 accused 1 had unauthorizedly inducted tenants it does not stand to reason that she would wait till April, 1990 to take action against accused 1. This delay has an adverse impact on the prosecution case.

21. It is well settled that this court should not interfere with an order of acquittal unless it is perverse. If the view taken by the trial court while passing the order of acquittal is a reasonably possible view, then though some other view is possible this court cannot substitute the view taken by the trial court with it.

22. Keeping this well established principle in mind, I am of the view that the reasonably possible view taken by the lower appellate court should not be interfered with in this appeal against acquittal. However, there are certain inherent limitations on the criminal court when it comes to commenting on the rights and title of the parties to a property. On this aspect it is only civil court which can give the final verdict. Therefore, the parties will have to wait for the decision of the civil court, so far as their right and title to the disputed property is concerned. Nothing said by me in this judgment should, therefore, be interpreted to mean that I have finally adjudicated upon the right of the parties to the disputed premises or house or as regards their claim to possession of the disputed premises. The civil court seized of the matters pertaining to the disputed premises shall deal with them independently and in accordance with law.

23. In the circumstances, Criminal Appeal 220 of 1996 is dismissed. Needless to say that in view of this dismissal, Criminal Revision Application No. 71 of 1996 is also dismissed.

JUDGE .

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 220 OF 1996

THE STATE OF MAHARASHTRA .. APPELLANT

VERSUS

LAXMAN GOPAL KANHERE .. RESPONDENT

Mrs. V. R. Bhosale, APP for appellant

Mr. Anilkumar Patil with Sachin Pawar, Nitin
Meshram and Himanshu Mahajan for respondent

WITH

CRIMINAL REVISION APPLICATION NO. 71 OF 1996

SOU. NALINI @ RAJESHWARI)
 PANDURANG NAGARKAR) .. PETITIONER
 (Org.Complainant)

Vs.

LAXMAN GOPAL KANHERE) .. (Orig. Accused)
 STATE OF MAHARASHTRA) .. RESPONDENTS

Mr. Shrishailya S. Deshmukh for petitioner

Mr. Anilkumar Patil with Sachin Pawar, Nitin
 Meshram and Himanshu Mahajan for respondent

Mrs. V. R. Bhosale, APP

CORAM: SMT. RANJANA DESAI, J.

DATE: OCTOBER 24, 2007.

OPERATIVE PART OF THE ORDER

. For the reasons stated in the oral judgment,
 this court has dismissed the appeal and criminal
 revision application.

JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 220 OF 1996
 WITH
 CRIMINAL REVISION APPLICATION NO. 71 OF 1996

DATE OF DECISION: 24/10/2007

Submitted for
 approval.

THE HON'BLE (SMT.) JUSTICE RANJANA DESAI:

THE HON'BLE SHRI JUSTICE :

1. Whether Reporters of Local Papers)
 be allowed to see the Judgment?)

2. To be referred to the Reporters or not?)
3. Whether Their Lordships wish to see the fair copy of the Judgment?)
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?)
5. Whether it is to be circulated to the Civil Judges?)
6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices?)